

4679

BILL NO. S-79-10-28

SPECIAL ORDINANCE NO. S-195-79

AN ORDINANCE approving an Agreement with The Westbridge Company, Inc., for construction of a sanitary sewer for Breconshire, Section I.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Agreement dated October 15, 1979, between the City of Fort Wayne, by and through its Mayor and the Board of Public Works and The Westbridge Company, Inc., Developer, for:

SANITARY SEWER

BRECONSHIRE-SECTION 1

Line A

Beginning at an existing manhole #1 over an existing 15" sanitary sewer, said manhole being situated approximately 1449 feet East and 190 feet North of the Southwest corner of the Northeast Quarter of Section 7, Township 30 North, Range 12 East, Allen County, Indiana; thence North a distance of approximately 185 feet to proposed manhole #2; thence West a distance of approximately 160 feet to proposed manhole #3; thence North a distance of approximately 310 feet to proposed manhole #4; thence West a distance of approximately 350 feet in part along the north property line of lots 17, 18 and 19 in BRECONSHIRE, SECTION 1 to proposed manhole #5, said manhole being located in the northeast corner of proposed lot #19 of BRECONSHIRE, SECTION 1; thence Westerly a distance of approximately 130 feet along the north property line of lots 19 and 20 in BRECONSHIRE, SECTION 1 to proposed manhole #6, said manhole being located in the northwest corner of lot #20 in BRECONSHIRE, SECTION 1; thence Westerly a distance of approximately 150 feet along the north property line of lots 21 and 22 in proposed BRECONSHIRE, SECTION 1 to proposed manhole #7, said manhole being located in the northwest corner of lot #22 in BRECONSHIRE, SECTION 1; thence Westerly a distance of approximately 240 feet along the north property line of lots 23, 24 and 25 in BRECONSHIRE, SECTION 1 to a proposed manhole #8, said manhole being located in the northwest corner of lot #25 in BRECONSHIRE, SECTION 1; thence Westerly a distance of approximately 170 feet along the north property line of lots 26 and 27 in BRECONSHIRE, SECTION 1 to proposed manhole #9, said manhole being located in the northwest corner of lot #27 in BRECONSHIRE, SECTION 1; thence Westerly a distance of approximately 140 feet along the north property line of lots 28, 29 and 30 in BRECONSHIRE, SECTION 1 terminating at proposed manhole #10, said manhole being located in the northeast corner of lot #30 in BRECONSHIRE, SECTION 1.

Line B

Beginning at proposed manhole #7, said manhole being situated in the northwest corner of lot #22 in BRECONSHIRE, SECTION 1 as set forth above; thence Northerly a distance of approximately 210 feet along the west property line of lots 9 and 10 in BRECONSHIRE, SECTION 1 to a proposed manhole #11, said manhole being the point of termination and being located in the northwest corner of lot #9 in BRECONSHIRE, SECTION 1.

Line C

Beginning at a proposed manhole #5, said manhole being situated in the northeast corner of lot #19 in BRECONSHIRE, SECTION 1 as set forth above; thence Northerly a distance of approximately 275 feet along the east property line of lots 11, 12 and 13 in BRECONSHIRE, SECTION 1 to proposed manhole #12, said manhole being the point of termination and being located in the northeast corner of lot #13 in BRECONSHIRE, SECTION 1.

of which the developer shall pay the entire cost and expense of the construction of said sewer, all as more particularly set forth in said agreement which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.


Councilman

APPROVED AS TO
FORM & LEGALITY


.....
William N. Salin, City Attorney

Read the first time in full and on motion by Burns, seconded by

Hinga, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19__ at _____ o'clock _____ M., E.S.T.

DATE: 10-23-79

Charles W. Winterman
CITY CLERK

Read the third time in full and on motion by Burns,

seconded by Hinga, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>6</u>	_____	_____	<u>3</u>	_____
<u>BURNS</u>	<u>X</u>	_____	_____	_____	_____
<u>HINGA</u>	<u>X</u>	_____	_____	_____	_____
<u>HUNTER</u>	_____	_____	_____	<u>X</u>	_____
<u>MOSES</u>	_____	_____	_____	<u>X</u>	_____
<u>NUCKOLS</u>	<u>X</u>	_____	_____	_____	_____
<u>SCHMIDT, D.</u>	<u>X</u>	_____	_____	_____	_____
<u>SCHMIDT, V.</u>	_____	_____	_____	<u>X</u>	_____
<u>STIER</u>	<u>X</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>X</u>	_____	_____	_____	_____

DATE: 11-13-79

Charles W. Winterman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

(~~ZONING MAP~~) (~~GENERAL~~) (~~ANNEXATION~~) (~~SPECIAL~~) (~~APPROPRIATION~~) ORDINANCE

(~~RESOLUTION~~) No. S-195-79, on the 13th day of November, 1979.
ATTEST: (SEAL)

Charles W. Winterman
CITY CLERK

James Stier
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th day of November, 1979, at the hour of 11:30 o'clock 4 M., E.S.T.

Charles W. Winterman
CITY CLERK

Approved and signed by me this 19th day of November, 1979,
at the hour of 4 o'clock _____ M., E.S.T.

Robert E. Cunningham
MAYOR

Bill No. S-79-10-28

REPORT OF THE COMMITTEE ON CITY UTILITIES

We, your Committee on City Utilities to whom was referred an Ordinance
approving an Agreement with The Westbridge Company, Inc., for
construction of a sanitary sewer for Breconshire, Section I

have had said Ordinance under consideration and beg leave to report back to the Common
Council that said Ordinance AS PASS.

PAUL M. BURNS - CHAIRMAN

SAMUEL J. TALARICO - VICE CHAIRMAN

VIVIAN G. SCHMIDT

DONALD J. SCHMIDT

JAMES S. STIER

11-15-79 CONCURRED IN
DATE 11-15-79 CHARLES W. WESTERMAN, CITY CLERK



THE CITY OF FORT WAYNE

CITY-COUNTY BUILDING • ONE MAIN STREET • FORT WAYNE, INDIANA 46802

board of public works

October 1, 1979

The Common Council
Fort Wayne, Indiana

Gentlemen and Mrs. Schmidt:

The City of Fort Wayne is entering into an Agreement for Sewer Extension with The Westbridge Company, Inc. for the construction of a sanitary sewer in Breconshire, Section I.

Jack Powell, President of Westbridge Co., Inc. has asked permission to begin construction immediately before adverse weather conditions arrive. Therefore, Board of Works respectfully requests a "Prior Approval" so that this may be accomplished.

Special Ordinance for formal approval will be submitted in the near future.

Sincerely,

BOARD OF PUBLIC WORKS

Henry P. Wehrenberg
HENRY P. WEHRENBURG, CHAIRMAN

CITY OF FORT WAYNE

Robert E. Armstrong
ROBERT E. ARMSTRONG, MAYOR

ep
APPROVED:

James R. Brown *Frederick R. White* *William J. (Wm.) J.*
John J. (John) J. *O. J. (Oscar) J.* *Samuel J. Talaris*
William T. (Wm.) J. *Vivian L. Schmidt* *John W.*
MEMBERS OF THE COMMON COUNCIL

ATTEST:

Charles W. Westerman
CHARLES W. WESTERMAN, CLERK

A G R E E M E N T
F O R
S E W E R E X T E N S I O N

THIS AGREEMENT made in triplicate this 15th day of October 1979, by and between THE WESTBRIDGE COMPANY, INC, hereinafter referred to as "Developer" and the CITY OF FORT WAYNE, INDIANA, an Indiana Municipal Corporation, hereinafter referred to as "City", WITNESSETH: WHEREAS, the Developer desires to construct a sanitary sewer described as follows:

BRECONSHIRE-SECTION 1

- Line A - Beginning at an existing manhole #1 over an existing 15" sanitary sewer, said manhole being situated approximately 1449 feet East and 190 feet North of the Southwest corner of the Northeast Quarter of Section 7, Township 30 North, Range 12 East, Allen County, Indiana; thence North a distance of approximately 185 feet to proposed manhole #2; thence West a distance of approximately 160 feet to proposed manhole #3; thence North a distance of approximately 310 feet to proposed manhole #4; thence West a distance of approximately 350 feet in part along the north property line of lots 17, 18 and 19 in BRECONSHIRE, SECTION 1 to proposed manhole #5, said manhole being located in the northeast corner of proposed lot #19 of BRECONSHIRE, SECTION 1; thence Westerly a distance of approximately 130 feet along the north property line of lots 19 and 20 in BRECONSHIRE, SECTION 1 to proposed manhole #6, said manhole being located in the northwest corner of lot #20 in BRECONSHIRE, SECTION 1; thence Westerly a distance of approximately 150 feet along the north property line of lots 21 and 22 in proposed BRECONSHIRE, SECTION 1 to proposed manhole #7, said manhole being located in the northwest corner of lot #22 in BRECONSHIRE, SECTION 1; thence Westerly a distance of approximately 240 feet along the north property line of lots 23, 24 and 25 in BRECONSHIRE, SECTION 1 to a proposed manhole #8, said manhole being located in the northwest corner of lot #25 in BRECONSHIRE, SECTION 1; thence Westerly a distance of approximately 170 feet along the north property line of lots 26 and 27 in BRECONSHIRE, SECTION 1 to proposed manhole #9, said manhole being located in the northwest corner of lot #27 in BRECONSHIRE, SECTION 1; thence Westerly a distance of approximately 140 feet along the north property line of lots 28, 29 and 30 in BRECONSHIRE, SECTION 1 terminating at proposed manhole #10, said manhole being located in the northeast corner of lot #30 in BRECONSHIRE, SECTION 1.
- Line B - Beginning at proposed manhole #7, said manhole being situated in the northwest corner of lot #22 in BRECONSHIRE, SECTION 1 as set forth above; thence Northerly a distance of approximately 210 feet along the west property line of lots 9 and 10 in BRECONSHIRE, SECTION 1 to a proposed manhole #11, said manhole being the point of termination and being located in the northwest corner of lot #9 in BRECONSHIRE, SECTION 1.
- Line C - Beginning at a proposed manhole #5, said manhole being situated in the northeast corner of lot # 19 in BRECONSHIRE, SECTION 1 as set forth above; thence Northerly a distance of approximately 275 feet along the east property line of lots 11, 12 and 13 in BRECONSHIRE, SECTION 1 to proposed manhole #12, said manhole being the point of termination and being located in the northeast corner of lot #13 in BRECONSHIRE, SECTION 1.

All sewers consist of 2320+ L. F. of 8-inch A.C.P. in accordance with plans, specifications and profiles heretofore submitted to the City and now on file in the Office of the Chief Water Pollution Control Engineer of the City Utilities of the City, and known as BRECONSHIRE, SECTION 1, which plans, specifications and profiles are by reference incorporated herin and made a part hereof, which sewer will servenot only land in which the Developer has an interest, but also adjoining land areas.

WHEREAS, the entire cost of construction of said sewer is to be paid for by the Developer.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. CONSTRUCTION OF SEWER.

The Developer Shall cause said sewer to be constructed and located in accordance with said plans, specifications and profiles, all approved by the City, under private contract to be let within sixty(60) days after requisite City approval. All work and materials shall be subject to inspection by City and the right of City to halt construction if there shall be noncompliance therewith. Said sewer shall not be deemed permanently connected into the sewer system of City until final acceptance by City. Upon completion, said sewer shall become the property of City and City shall accept sewage therefrom, subject to such sewage service charges as may now or hereafter be regularly established by City, and all further maintenance thereafter shall be born by City.

2. COST OF CONSTRUCTION.

The Developer agrees to pay the entire cost and expense of construction of said sewer, in cash, including engineering and City inspection fees, and to hold the City harmless from any liability for claims connected therewith.

3. AREA OF DEVELOPER.

Said sewer, when accepted by the City will serve the following described real estate,

Part of the Northeast Quarter of Section 7, Township 30 North, Range 12 East, Allen County, Indiana, more particularly described as follows, to-wit:

Beginning at the southwest corner of the northeast quarter of Section 7, Township 30 North, Range 12 East; thence East on and along the South line of said Northeast Quarter a distance of 2198.79 feet; thence Northerly, by an interior angle of 88 - 56', a distance of 1187.2 feet, thence Westerly, by an interior angle of 91 - 56' a distance of 757.2 feet; thence Southerly, by an interior angle of 88 - 04', a distance of 40.5 feet; thence Westerly by a deflection angle to the right of 90 - 17' a distance of 330 feet to the northeast corner of lot #14 of Pavey's Subdivision, thence Southerly, by an interior angle of 90 - 17' on and along the East line of lot #14 of said Pavey's Subdivision a distance of 195.5 feet to the Northeast corner of lot #15 in said Pavey's Subdivision; thence N88 - 49'W on and along the north line of lot #15 of said Pavey's Subdivision a distance of 1077.2 feet to the East right-of-way line of Getz Road as established by Documents 377-04654 and 376-25145 in the Office of the Recorder of Allen County, Indiana; thence south, on and along said East right-of-way line, a distance of 391.3 feet to the point of intersection of said East right-of-way line with the South line of lot #16 of said Pavey's Subdivision; thence S88 - 49'E on and along the South line of said lot #16, a distance of 1075.3 feet to the Southeast corner of said lot #16; thence S00 - 17'W on and along the East line of lot 317 of Said Pavey's Subdivision, a distance of 195.8 feet to the Southeast corner of said lot #17; thence, N88 - 49'W on and along the South line of said lot #17, a distance of 863.8 feet; thence, S00 - 17W a distance of 168.0 feet; thence N88 - 49'W a distance of 208 feet to the East right-of-way line of Getz Road; thence south, on and along said East right-of-way line a distance of 207.75 feet to the point of beginning containing approximately 47.5 acres of which BRECONSHIRE, SECTION 1 is the following part;

Part of Lots #15 and #16 in Pavey's Subdivision to Fort Wayne, being a Subdivision of part of the West Half of the Northeast Quarter of Section 7, Township 30 North, Range 12 East, Allen County, Indiana, more particularly described as follows, to wit:

Beginning at the point of intersection of the South line of said Lot #16 with the East right-of-way line of Getz Rd. as established by Document #77-04654 and #76-25145 in the Office of the Recorder of Allen County, Indiana, thence N00 - 00'E (assumed bearing), on and along said East right-of-way line, a distance of 391.3 feet to the point of intersection of said East right-of-way line with the North line of said Lot #15; thence S88 - 49' E, on and along said North line, a distance of 1077.2 feet to the Northeast corner of said Lot #15; thence S00 - 17' W, on and along the East lines of Lots #15 and #16, a distance of 391.3 feet to the Southeast corner of said Lot #16; thence N88 - 49' W, on and along the South line of said Lot #16, a distance of 1075.3 feet to the point of beginning, containing 9,666 acres of land, subject to easements of record.

As the Developer will pay the entire cost of construction of said sewer as it pertains to the above described area, no charge or assessment is made by this Agreement against the above described real estate for the construction of said sewer by the present or future owners of said real estate except only such standard tap-in, inspection fees and monthly sewage treatment charges as are customarily charge by the City for connections to City sewer mains and treatment of sewage therefrom.

4. CHARGE AGAINST AREA.

An area connection charge of \$500.00 per acre shall be paid to the City at the time of connection for Magnavox Interceptor per Deed Book 328, page 169-173. An area connection charge of \$150.00 per acre shall be paid to Diversified Utilities, Inc. per recorded document #72-01811. All charges shall be paid prior to construction.

5. BOND.

This contract is subject to Developer furnishing a satisfactory Guaranty Bond for 25% of the value of the sewer which shall guarantee said sewer against defects for a period of one (1) year from the date of final acceptance of said sewer by the City.

6. LIMITATION ON USE.

Said sewer shall be constructed for disposal of sanitary sewage only, and neither the parties hereto, their successors, or assigns or any future owner of any land serviced by said sewer, shall at any time discharge or permit to be discharged or to flow into said sanitary sewer, any water runoff caused by natural precipitation or anything other than sanitary sewage or contaminated waste.

7. WAIVER OF RIGHT TO REMONSTRATE AGAINST ANNEXATION.

The Developer, for himself, his successors in title and assigns waives and releases any and all rights which it may now or hereafter have to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of any territory now or hereafter owned by him, as described in Article 3 herein, or hereafter served by said sewer or any extension thereof.

In further consideration and to induce City to execute and ratify this contract, said Developer, for himself, his successors and assigns, agrees by this contract to vest in City the permanent right at its discretion to annex to the City of Fort Wayne at any future time by duly authorized ordinance the said real estate described in Article #3 herein.

Developer further agrees that any deeds, contracts, or other instruments of conveyance made by the Developer, its successors or assigns, transferring or conveying any interest or title in and

to any of the real estate described in Article 3 herein, shall contain the waiver and release provisions contained in the article, which provisions shall run with the land and the acceptance of the delivery of any such instrument from the Developer, his successors and assigns by grantee, vendee, or contract purchaser, shall be made subject to the terms of this Agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee, or contract purchaser and their successors in title. The Developer further agrees to record an executed copy of this contract in the Allen County Recorder's Office within ten (10) days of its adoption and approval by the Common Council of City as hereinafter provided.

Any owner or owners of land which is now, or hereafter located outside the corporate limits of City who connect into the sewer constructed hereunder shall be deemed to thereby waive his, her, their, or its right to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of such land or of the territory on which it is located or of the area served by said sewer.

8. GOVERNING STATUTE.

It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Sections 16, 17 and 18 of Chapter 128 of the Acts of 1967 of the State of Indiana (I.C. 19-2-7-16, I.C. 19-2-7-17, and I.C. 19-2-7-18), the provisions of which Sections shall govern with respect to any matters not specifically outlined herein.

9. COUNCILMANIC APPROVAL.

It is understood and agreed that this contract is in all respects subject to approval by the Common Council of City, by duly adopted Ordinance, and if such Ordinance is not adopted within a period of ninety (90) days after execution thereof, this contract shall be null and void and of no further force and effect.

IN WITNESS WHEREOF, the parties have subscribed to this Agreement the day and year first above written.

ATTEST:

By:

Melvin J. Powell
Melvin J. Powell
Corporate Secretary

Linda S. Powell

Linda S. Powell 1st #2

M. Jack Powell, Jr.

M. Jack Powell, Jr. 1st #2

By:

M. Jack Powell, Jr.
M. Jack Powell, Jr.
President
"DEVELOPER"

CITY OF FORT WAYNE, INDIANA

By:

Robert Armstrong
Robert Armstrong, Mayor

BOARD OF PUBLIC WORKS

By:

Henry P. Wehrenberg
Henry P. Wehrenberg, Chairman

By:

Ethel H. LaMar
Ethel H. LaMar, Member

By:

Max G. Scott
Max G. Scott, Member

ATTEST:

Mrsula Miller

Clerk

Approved as to form and legality:

Larry J. Brinker
Associate City Attorney

This instrument prepared by: M. Jack Powell, Jr.

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared William J. Powell and M. Jack Powell, Jr. of The Westbridge Company, Inc. and Linda S. Powell and M. Jack Powell, Jr.

who acknowledged the execution of the foregoing agreement for sewer extension as and for his voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 24th day of September, 1979.

Helen Marie Fair
Notary Public

Resident of Allen County

My Commission Expires:

6-11-81

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert Armstrong, Mayor; Henry P. Wehrenberg, Chairman of the Board of Public Works; Ethel H. LaMar and Max G. Scott, Members of the Board of Public Works, who acknowledged the execution of the foregoing agreement for sewer extension, as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this _____ day of _____, 1979.

Notary Public

Resident of _____

My Commission Expires:

4679
TITLE OF ORDINANCE SPECIAL ORDINANCE - AGREEMENT FOR SEWER EXT., BRECONSHIRE, SEC. I

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS

28
2-79-10-28
SYNOPSIS OF ORDINANCE AGREEMENT FOR SEWER EXTENSION BETWEEN CITY AND THE WESTBRIDGE CO., INC.

FOR CONSTRUCTION OF SANITARY SEWER TO SERVE BRECONSHIRE, SECTION I.

(AGREEMENT ATTACHED)

PRIOR APPROVAL ACQUIRED, A COPY OF WHICH IS ATTACHED HERETO

EFFECT OF PASSAGE CONSTRUCTION OF SANITARY SEWER TO SERVE NEW HOMES UNDER CONSTRUCTION

IN ABOVE-DESCRIBED AREA

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) DEVELOPER TO PAY ENTIRE COST AND

EXPENSE OF CONSTRUCTION OF SAID SEWER

ASSIGNED TO COMMITTEE